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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ABS DISTRIBUTION, a division of ABS
INDUSTRIAL RESOURCES LTD.,

08 Civ. 7376 (RJS)

Plaintiff,

COMPLAINT

- against –
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MSC ELIANA and *MSC AMSTERDAM*, their
engines, boilers, etc.; Mediterranean Shipping
Company, S.A.; B.C. Transportation, Inc.; and
ContainerPort Group, Inc.,

Defendants.

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Plaintiff, by its attorneys, McDERMOTT & RADZIK, LLP, alleges upon
information and belief, as follows:

FIRST: This action arises from an intermodal carriage of goods in interstate
and international commerce and is governed by federal common law and federal statutes
including the Carmack Amendment to the ICC Termination Act of 1995 (49 U.S.C.
§ 14706) and this court has subject matter jurisdiction over this action pursuant to 28
U.S.C. §§ 1331 and 1337.

SECOND: This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest.

THIRD: This Court also has subject matter jurisdiction over this action by virtue of the fact that this is an admiralty or maritime action within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and pursuant to 28 U.S.C. § 1333.

FOURTH: All and singular the following premises are true and constitute an admiralty or maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

FIFTH: At and during all the times hereinafter mentioned, Plaintiff had and now has the legal status and principal office and place of business stated in Schedule "A", hereto annexed, and by this reference made a part hereof.

SIXTH: At and during all the times hereinafter mentioned, Defendants had and now have the legal status and office and place of business stated in Schedule "A", and was and now is engaged in business as a common carrier of merchandise by water for hire, and owned, operated, managed, chartered and/or otherwise controlled the vessels above named as a common carrier of merchandise by water for hire.

SEVENTH: This Court has personal jurisdiction over the Defendants, and venue is proper by reason of Defendants' regular and systematic contacts with the State of New York and by reason of the forum selection clause contained in the bill of lading contract

of carriage issued by Defendants, which specifies that disputes under said bill of lading are subject to the jurisdiction of the United States District Court for the Southern District of New York.

EIGHTH: At and during all the times hereinafter mentioned, the said vessels were and now are general ships employed in the common carriage of merchandise by water for hire, and now are or will be during the pendency of this action, within this District and within the jurisdiction of this Honorable Court.

NINTH: On or about the date and at the port of shipment stated in Schedule "A", there was shipped by the shipper therein named and delivered to Defendants and the said vessels, as common carriers, the shipment described in Schedule "A" then being in good order and condition, and Defendants and the said vessels then and there accepted said shipment so shipped and delivered to them, and in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipment to the port of destination stated in Schedule "A", and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to the consignees named in Schedule "A".

TENTH: Thereafter, the said vessels arrived at the port of destination, where they and Defendants made delivery of the shipment, but not in like good order and condition as when shipped, delivered to and received by them, but on the contrary, seriously injured and impaired in value by reason of the matter and things stated in Schedule "A", all in violation of Defendants' and the said vessels' obligations and duties as a common carrier of merchandise by water for hire.

ELEVENTH: Plaintiff was the shipper, consignee or owner of the shipment described in Schedule "A" and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipment, as its respective interests may ultimately appear, and Plaintiff is entitled to maintain this action.

TWELFTH: By reason of the premises, Plaintiff has sustained damages, as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of \$83,926.40.

WHEREFORE, Plaintiff prays:

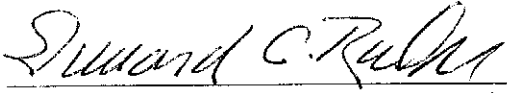
1. That process in due form of law may issue against Defendants citing them to appear and answer all and singular the matters aforesaid;
2. That if Defendants cannot be found within this District, then all its property within this District as shall be described in Schedule "A", be attached in the sum of \$83,926.40, with interest thereon and costs, the sum sued for in this Complaint;
3. That Judgment may be entered in favor of Plaintiff against Defendants for the amount of Plaintiff's damages, together with interest and costs and the disbursements of this action;
4. That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims, may issue against said vessels, their engines, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matter aforesaid, and that this Court will be pleased to pronounce judgment in favor of Plaintiff for its damages as aforesaid,

with interest, costs and disbursements, and that the said vessels may be condemned and sold to pay therefor; and

5. That this Court will grant to Plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
August 20, 2008

McDERMOTT & RADZIK, LLP
Attorney for Plaintiff,

BY: 
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(File: 66-08-78 ECR)

SCHEDULE A

Plaintiff's Legal Status and Office and Place of Business:

Plaintiff, ABS Distribution is a corporate division of ABS Industrial Resources Ltd., a corporation organized and existing under and by virtue of the laws of Great Britain with an office and place of business at The Brickworks, Kilnhurst Road, Kilnhurst, Mexborough, U.K.

Defendants' Legal Status and Office and Place of Business:

Defendant, Mediterranean Shipping Company, S.A., was and now is a corporation or other business entity organized and existing under and by virtue of the laws of a foreign country with an office and place of business in care of its General Agent, 420 Fifth Avenue, New York, NY 10018.

Defendant, B.C. Transportation, Inc., was and now is a corporation organized and existing under and by virtue of the laws of one of the States of the United States with an office and place of business at 1340 Depot Street, Suite 103, Cleveland, OH 44116.

Defendant, ContainerPort Group, Inc. was and now is a corporation organized and existing under and by virtue of the laws of one of the States of the United States with an office and place of business at 1340 Depot Street, Suite 103, Cleveland, OH 44116.

Vessels : ***MSC ELLANIA*** transshipped to ***MSC AMSTERDAM***
At Durban

Bill of Lading No. : MSCUKE230103

Container No. : MSCU2841565; MSCU1122568

Port of Loading : Mombasa

Port of Discharge : New York

Date of Delivery : Towanda, Pennsylvania

Shipper : ABS Alloys & Metals

Consignee : BDP International

Description : Drums of Tungsten Concentrate

Nature of Claim : Short Delivery / Container Seal Discrepancy

Amount : \$83,926.40

MSC Ref. : GVA 2007-59-6682

M&R File : 66-08-78 ECR